

others.<sup>7/</sup> Although the Commission has previously held, in a ruling with which Monroe agrees, that the record evidence of Video 44's meritorious operations in its current Spanish language format may not be considered in connection with the comparative aspects of this case,<sup>8/</sup> both Video 44 and Monroe agree that such evidence may properly be considered by the Commission in passing on the proposed settlement. If Monroe's application is dismissed, as the parties request, then this case will cease to be a comparative proceeding, and purely comparative factors, including the renewal expectancy factor, will no longer be relevant here. Cf. Alabama Educational Television Commission, 50 F.C.C.2d 461, 476 (1975). In light of Video 44's record of meritorious service over the past seven years, and given the other unique circumstances of this case, approval of the proposed settlement will plainly serve the public interest.

For the foregoing reasons, the parties request that the attached settlement agreement be approved; that Monroe's application be dismissed, with prejudice, in accordance therewith;

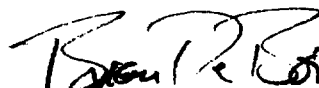
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7/ See, e.g., Video 44's November 30, 1990 Petition for Reconsideration at 1-3 & 18-22; November 30, 1990 City of Chicago "Amicus Curiae Brief in Support of Video 44"; December 3, 1990 "Motion for Leave to File Amicus Brief and Brief for Governor James R. Thompson as Amicus Curiae in Support of Video 44's Petition for Reconsideration"; November 29, 1990 Coalition in Defense of Access to Channel 44 "Statement in Support of Video 44's Petition for Reconsideration"; December 3, 1990 "Brief for Latino Committee on the Media as Amicus Curiae in Support of Video 44's Petition for Reconsideration"; see also Video 44, 6 F.C.C. Rcd. at 4953-57 (Commissioner Quello, dissenting); id. at 4958 (Commissioner Barrett, concurring).

8/ Video 44, 6 F.C.C. Rcd. at 4950.

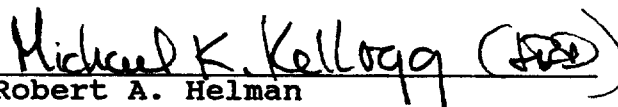
and that the Commission promptly consider and resolve any remaining issues in the proceeding, in accordance with Video 44's contemporaneously submitted motion for resolution of remaining issues and grant of Video 44's application for renewal of license.<sup>9/</sup>

Respectfully submitted



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N. Frank Wiggins  
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Counsel for VIDEO 44

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<sup>9/</sup> Upon final Commission action granting this Petition and dismissing Monroe's application with prejudice, Video 44 intends to request the dismissal of its pending appeal (Case No. 91-1455) before the Court of Appeals for the District of Columbia Circuit.



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Counsel for MONROE COMMUNICATIONS  
CORPORATION

October 28, 1992

ATTACHMENT 1

CHANNEL 44 SETTLEMENT AGREEMENT

This settlement agreement is entered into on October 8, 1992 to be effective as of September 1, 1992 (the "Effective Date") between Harriscope of Chicago, Inc. ("Harriscope"), an Illinois corporation, Essaness Theatres Corporation ("Essaness"), a Delaware corporation, National Subscription Television of Chicago, Inc. ("NSTC"), a Delaware corporation and Video 44, a joint venture formed by Harriscope, Essaness and NSTC (together with Video 44, the "Video 44 Parties"); and Monroe Communications Corporation, ("Monroe"), an Illinois corporation, and the individual directors and principal shareholders of Monroe whose signatures appear below (the "Shareholders" and together with Monroe, the "Monroe Parties").

WHEREAS,

A. Video 44 owns and operates the station WSNS-TV in Chicago, Illinois on UHF television channel 44 (the "Station"). The Shareholders collectively own over 75% of the voting stock of Monroe.

B. In August 1982, Video 44 filed an application before the Federal Communications Commission (the "Commission") for renewal of the license of the Station (File No. BRCT-820802J9, MM Docket No. 83-575). In November 1982 Monroe filed an application for a construction permit specifying the facilities utilized in the operation of the Station (File No. BPCT-821101KH, MM Docket No. 83-576). The two applications are mutually exclusive.

C. In 1989, following a comparative hearing and preliminary decisions by an administrative law judge and the Commission's Review Board, the Commission granted Video 44's application and denied Monroe's competing application. Harrisclope of Chicago, Inc., 4 FCC Rcd 1209 (1989). On appeal the United States Court of Appeals for the District of Columbia Circuit (the "Court") remanded the case to the Commission for further proceedings. Monroe Communications Corp. v. FCC, 900 F.2d 351 (1990).

D. On remand the Commission denied Video 44's renewal application and granted Monroe's competing application. Harrisclope of Chicago, Inc., 5 FCC Rcd. 6393 (1990), reconsid. denied, 6 FCC Rcd. 4948 (1991). Video 44 has appealed this decision. Harrisclope of Chicago, Inc. v. FCC, No. 91-1455 (D.C. Cir., Oral Argument scheduled for September 24, 1992).

E. The parties now wish to settle their disputes and, subject to Commission approval, Monroe wishes to withdraw its application for a construction permit and Video 44 wishes to acquire Monroe's rights to the license and obtain Monroe's assistance in obtaining renewal of its license.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Subject to Paragraph 11, Monroe agrees to withdraw and request dismissal of its application, with prejudice, before the

Commission for a construction permit and to withdraw its opposition to Video 44's application for renewal of its license.

2. Upon the delivery of the letter or letters of credit and the establishment of the escrow account as provided in Paragraph 14, Video 44 and Monroe will jointly prepare and file:

- a. A joint motion (i) advising the Court that a settlement of the parties' differences has been agreed to, subject to the approval of the Commission, and (ii) requesting the Court to defer oral argument and hold Video 44's pending appeal (Docket No. 91-1455) in abeyance in order to permit the Commission to consider the proposed settlement. The parties will use their best efforts to obtain the agreement of the Commission's counsel to join in the motion, and the parties agree that the precise form of the joint motion to be filed, and the precise relief to be requested therein, may be adjusted in ways not materially adverse to Video 44 or Monroe in response to such suggestions as the Commission's counsel might reasonably make as a condition to joining in such motion.
- b. A joint request to the Commission for approval of the settlement pursuant to 47 U.S.C. § 311(d)(2), the granting of Video 44's license renewal

application, and the dismissal with prejudice of Monroe's application.

3. Video 44 and Monroe agree to use their best efforts to obtain approval by the Commission of both the settlement described herein and Video 44's license renewal application. The required efforts shall include, but are not limited to, discussions with the Commission's litigation counsel and the Commission's Mass Media Bureau.

4. Subject to Paragraph 11, the Monroe Parties agree that none of them will, directly or indirectly:

- a. in any way oppose, interfere with or obstruct Video 44's 1982 license renewal application or
- b. in any way oppose, interfere with or obstruct, or file, participate in or support the filing of any application in competition with, or any petition to deny, either of the next two succeeding Video 44 renewal applications.

5. Subject to Paragraph 11, Video 44 agrees that within 10 days of the date on which an order by the Commission approving the settlement and dismissing Monroe's application with prejudice shall have become a final order not subject to judicial review (the "Approval Date"), Video 44 will deliver to Monroe in cash \$11,666,667, plus interest thereon (computed at a rate one percent per annum in excess of the Prime Rate from time to time in effect) from the Effective Date to the date on which the payment is made. "Prime Rate" shall mean the rate per annum (6%

on the date of this agreement) announced as its reference rate and modified from time to time by Continental Bank N.A.

Notwithstanding the foregoing, if the payment described in this Paragraph is not made when due interest will accrue at the rate of four percent per annum in excess of the Prime Rate from time to time in effect (the "Default Rate") during the pendency of the default, and Video 44 shall be responsible for Monroe's reasonable costs of collection, if any, including reasonable legal fees related thereto. Payment of amounts due hereunder to Monroe shall be made by wire transfer to LaSalle National Bank, 120 South LaSalle Street, Chicago, Illinois, ABA Routing No. 071000505 for the account of Monroe, Account No. 2251118, Attn: Ann Ellingsen.

6. Subject to Paragraph 11, Video 44 agrees that within 10 days of the date on which an order by the Commission granting Video 44's license renewal application without any conditions materially adverse to Video 44 shall have become a final order not subject to judicial review (the "Renewal Date"), Video 44 will deliver to Monroe in cash an additional amount of \$6,009,757 plus interest calculated only on \$5,833,333 of such amount (computed at a rate one percent per annum in excess of the Prime Rate from time to time in effect) from the Effective Date to the date on which the payment is made. Until and unless the Renewal Date occurs no such additional payment shall be due. For purposes of this Paragraph renewal for a period of less than five years shall not, by itself, constitute a materially adverse

condition. Notwithstanding the foregoing, if the payment described in this Paragraph is not made when due interest will accrue at the Default Rate during the pendency of the default, and Video 44 shall be responsible for Monroe's reasonable costs of collection, if any, including reasonable legal fees related thereto. Payment of amounts due hereunder to Monroe shall be made by wire transfer to LaSalle National Bank, 120 South LaSalle Street, Chicago, Illinois, ABA Routing No. 071000505 for the account of Monroe, Account No. 2251118, Attn: Ann Ellingsen.

7. Except as provided in Paragraph 9 and subject to Paragraph 11, each of the Video 44 Parties forever releases, remises and discharges each of the Monroe Parties and Monroe's directors, officers, employees, shareholders, controlling persons, attorneys, agents, successors and assigns from any and all claims or causes of action of any kind or nature, without limitation, that are known, unknown, present, past or future which they had, have or may have or may hereafter have arising in any way from or relating in any way to the ownership or operation of the Station, the applications of Video 44 and Monroe before the Commission or the related litigation.

8. Except as provided in Paragraph 9 and subject to Paragraph 11, each of the Monroe Parties forever releases, remises and discharges each of the Video 44 Parties and their directors, officers, employees, shareholders, controlling persons, attorneys, agents, successors and assigns from any and all claims or causes of action of any kind or nature, without

limitation, that are known, unknown, present, past or future which they had, have or may have or may hereafter have arising in any way from or relating in any way to the ownership or operation of the station, the applications of Video 44 and Monroe before the Commission or the related litigation.

9. Notwithstanding the mutual releases contained in this agreement, nothing in this agreement shall be considered, construed or operate as a release, covenant not to sue or a waiver by any party of its rights to enforce this agreement.

10. Harrisclope, Essaness and NSTC agree to use their best efforts to cause Video 44 to perform fully all of its obligations under this agreement. The Shareholders agree to use their best efforts to cause Monroe to perform fully all of its obligations under this agreement.

11. The settlement contemplated herein is subject to approval of the Commission. Paragraphs 1, 4(b), 5, 6, 7, 8, 13 and 14 of this agreement shall not be effective until the Approval Date. In the event that the Commission in a final order, no longer subject to judicial review, refuses to give such approval this entire agreement shall be null and void, Video 44's pending appeal and Monroe's application in opposition to Video 44's application for renewal shall be reactivated, Monroe shall deliver to Video 44 the letter or letters of credit described in Paragraph 14 and the escrow described in Paragraph 14 shall be dissolved and the funds returned to Video 44.

12. The parties agree that all publicity and public comment regarding this agreement, the competing applications and the litigation and related matters described herein shall be under the joint direction of Video 44 and Monroe. All parties agree to use their best efforts to ensure that the respective employees, agents and other shareholders of Monroe and Video 44 do not, make any public or private disclosure or comment or issue any press release related to such matters unless approved in advance by both Video 44 and Monroe. This provision shall not apply to information already in the public domain.

13. The Monroe parties and the Video 44 parties agree that upon receipt by Monroe of the payment described in Paragraph 6 the non-competition provisions contained in Schedule A will be incorporated by reference and made a part of this agreement without need for any further action by any person.

14. a. In order to secure payment of the sums that may be due Monroe under Paragraph 5 and Paragraph 6, Video 44 shall deliver one or more irrevocable letters of credit and/or establish a cash escrow account, all in favor of Monroe (with interest on any cash in escrow in excess of amounts necessary to satisfy Video 44's obligations to Monroe hereunder to accrue for Video 44's benefit), in the aggregate amount of \$17,676,424, no later than October 13, 1992.

b. Such irrevocable letters of credit and escrow account shall be in form reasonably acceptable to Monroe and its counsel, shall reflect the relevant portions of this Paragraph 14

and shall provide for payment to Monroe solely upon presentation to the issuing bank or banks or escrow agent of the following documentation:

(1) An opinion from Bechtel & Cole, Chartered, special counsel to Monroe (in form substantially that of Schedule B hereto) confirming that the Commission action specified in Paragraph 5 or Paragraph 6, as applicable, has occurred, that more than 10 days have passed since the Commission action became final and no longer subject to judicial review, and that Monroe has not yet been paid the amount due it hereunder.

(2) A certified copy of the Commission's Order specified in Paragraph 5 or Paragraph 6, as applicable.

c. Upon Video 44's payment to Monroe (other than out of the escrow) of any amount due under Paragraph 5, Monroe shall execute and deliver instructions to the bank or banks (in form substantially that of Schedule D hereto) to reduce the coverage amounts of the letter or letters of credit by the amount of the payment. If such instructions are to be delivered with respect to more than one letter of credit, Video 44 shall designate at the time of payment the relative reduction to be made with respect to each letter.

d. Upon Video 44's payment of all amounts due Monroe hereunder, including, without limitation, the amount due under

Paragraph 6, Monroe shall execute and deliver instructions to the bank or banks (in form substantially that of Schedule E hereto) to cancel, terminate and revoke all letters of credit and to release to Video 44 any amounts remaining in the escrow account.

e. Upon Video 44's failure to pay any amount due under Paragraph 5 or Paragraph 6 when due, Video 44 hereby waives notice and demand for payment and agrees that Monroe may immediately draw upon the letters of credit or escrow account. All fees and costs of obtaining and maintaining the letters of credit and escrow account shall be borne equally by Monroe and Video 44. The issuing banks and escrow agent shall be recognized money center banks reasonably acceptable to Monroe. Monroe agrees that The First National Bank of Chicago and The First National Bank of Boston are acceptable banks for this purpose.

f. In the event that the Commission in a final order, no longer subject to judicial review, refuses to approve the settlement contemplated herein, such irrevocable Letters of Credit shall expire and such escrow account shall be liquidated in favor of Video 44 upon presentation to the issuing bank or banks or escrow agent of the following documentation:

- (1) An opinion from Cohn and Marks, special counsel to Video 44 (in form substantially that of Schedule C hereto) confirming that the Commission action specified in the third sentence of Paragraph 11 has occurred and become final and no longer subject to judicial review.

(2) A certified copy of the Commission's order.

15. This agreement shall be construed in accordance with the laws of Illinois. It sets forth the entire agreement and understanding of the parties hereto and supersedes any prior agreements, arrangements and understandings relating to the subject matter herein. It may be signed in one or more counterparts which together will constitute a binding agreement.

WHEREFORE, the parties hereto, acting through legally designated and authorized representatives, have executed this agreement, which, subject to Paragraphs 9 and 11, constitutes a full, final and complete settlement between the parties for all matters described herein.

IN WITNESS WHEREOF, the undersigned have executed this agreement below.

VIDEO 44

By: HARRISCOPE OF CHICAGO, INC.

By: Burt I. Harris, President

HARRISCOPE OF CHICAGO, INC.

By: Burt I. Harris, President

ESSANESS THEATRES CORPORATION

By: Alan T. Silverman  
Vice President

NATIONAL SUBSCRIPTION TELEVISION  
OF CHICAGO, INC.

By: Paul J. Halas  
Paul J. Halas, President

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IN WITNESS WHEREOF, the undersigned have executed this agreement below.

VIDEO 44

By: HARRISCOPE OF CHICAGO, INC.

By: Burt I. Harris  
Burt I. Harris, President

HARRISCOPE OF CHICAGO, INC.

By: Burt I. Harris  
Burt I. Harris, President

ESSANESS THEATRES CORPORATION

By: \_\_\_\_\_  
Alan P. Silverman  
Vice President

NATIONAL SUBSCRIPTION TELEVISION  
OF CHICAGO, INC.

By: \_\_\_\_\_  
Paul J. Halas, President

IN WITNESS WHEREOF, the undersigned have executed this agreement below.

VIDEO 44

By: HARRISCOPE OF CHICAGO, INC.

By: Burt I. Harris, President

HARRISCOPE OF CHICAGO, INC.

By: Burt I. Harris, President

ESSANESS THEATRES CORPORATION

By: Alan T. Silverman  
Vice President

NATIONAL SUBSCRIPTION TELEVISION  
OF CHICAGO, INC.

By: Paul J. Halas  
Paul J. Halas, President

25

IN WITNESS WHEREOF, the undersigned have executed this agreement below.

VIDEO 44

By: HARRISCOPE OF CHICAGO, INC.

By: Burt I. Harris, President

Witnessed by: James L. Smith, Secretary

By: Burt I. Harris, President

ESSANESS THEATRES CORPORATION

By: Alan T. Silverman  
Alan T. Silverman  
Vice President

NATIONAL SUBSCRIPTION TELEVISION  
OF CHICAGO, INC.

By: Paul J. Halas, President

MONROE COMMUNICATIONS CORPORATION

By: Howard N. Gilbert  
Vice-President

Directors and Principal  
Shareholders of  
MONROE COMMUNICATIONS CORPORATION:

Robert L. Haag  
Robert L. Haag

Howard N. Gilbert  
Howard N. Gilbert

Wayne J. Fickinger  
Wayne J. Fickinger

A. R. Umans  
A. R. Umans

Manfred Steinfeld  
Manfred Steinfeld

Schedule A

A. This attachment is part of and binding upon the parties to the Channel 44 Settlement Agreement (the "Agreement") dated as of September 1, 1992 between and among Harriscope of Chicago, Inc. ("Harriscope"), an Illinois corporation, Essaness Theatres Corporation ("Essaness"), a Delaware corporation, National Subscription Television of Chicago, Inc. ("NSTC"), a Delaware corporation and Video 44, a joint venture formed by Harriscope, Essaness and NSTC (together with Video 44, the "Video 44 Parties"); and Monroe Communications Corporation, an Illinois corporation, and five individual directors and principal shareholders of Monroe (the "Shareholders" and together with Monroe, the "Monroe Parties").

B. The Monroe parties agree that for a period of five years from the Approval Date none of them will, directly or indirectly, compete with Video 44 by operating or participating in the operation of any Spanish-language television station broadcasting in the Chicago area. Notwithstanding the foregoing, ownership without personal control of less than 10% of such television station shall not be deemed to violate this provision.

C. The Monroe parties and the Video 44 parties agree that \$4,000,000 of the consideration set forth in Paragraph 6 of the Agreement shall be allocated to the covenant not to compete set forth above, and that the remaining consideration paid to Monroe pursuant to Paragraph 5 and Paragraph 6 shall be allocated to the

other rights transferred to Video 44 by and the other agreements made by the Monroe parties pursuant to the Agreement.

[date]

Dear Sir/Madam:

Re: Letter of Credit/Escrow Account\* No. \_\_\_\_\_

This firm has acted as special counsel for Monroe Communications Corporation ("Monroe") in connection with the Channel 44 Settlement Agreement (the "Agreement") effective as of September 1, 1992 between and among Harriscope of Chicago, Inc. ("Harriscope"), an Illinois corporation, Essaness Theatres Corporation ("Essaness"), a Delaware corporation, National Subscription Television of Chicago, Inc. ("NSTC"), a Delaware corporation and Video 44, a joint venture formed by Harriscope, Essaness and NSTC (together with Video 44, the "Video 44 Parties"); and Monroe, an Illinois corporation, and five individual directors and principal shareholders of Monroe (the "Shareholders" and together with Monroe, the "Monroe Parties"). This opinion is rendered to you pursuant to Paragraph 14 of the Agreement.

1. On [date] the Federal Communications Commission ("FCC") or its Review Board or one of its administrative law judges released an order (or orders) [approving the settlement contemplated by the Agreement and dismissing with prejudice Monroe's application for a construction permit (File No. BPCT-821101K-H, MM Docket No. 83-576)] [granting Video 44's application for renewal of the license to station WSNS-TV in Chicago, Illinois (File No. BRCT-820802J9, MM Docket No. 83-575)].\* The order (or orders) does not include any conditions materially adverse to Video 44.

2. On [date], more than ten days ago, the order (or orders) became final and no longer subject to judicial review. Under the express terms of the Communications Act of 1934, as amended, and applicable rules of the FCC and the courts, the time for filing a request for administrative or judicial review of the action, or for the FCC to act on its own motion pursuant to § 1.302 of the Commission's Rules expired without any such filing or action having been made or taken. A certified copy of the order (or orders) is attached.

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\* As applicable.

3. The date for payment pursuant to Paragraph [5] [6]\* of the agreement has passed, Video 44 has defaulted in making the payment required thereunder and such default has not been cured.

Sincerely,

BECHTEL & COLE

By: \_\_\_\_\_

[date]

Dear Sir/Madam:

Re: Letter of Credit/Escrow Account\*\* No. \_\_\_\_\_

This firm has acted as special counsel for Video 44 in connection with the Channel 44 Settlement Agreement (the "Agreement") effective as of September 1, 1992 between and among Harriscope of Chicago, Inc. ("Harriscope"), an Illinois corporation, Essaness Theatres Corporation ("Essaness"), a Delaware corporation, National Subscription Television of Chicago, Inc. ("NSTC"), a Delaware corporation and Video 44, a joint venture formed by Harriscope, Essaness and NSTC (together with Video 44, the "Video 44 Parties"); and Monroe Communications Corporation ("Monroe"), an Illinois corporation, and five individual directors and principal shareholders of Monroe (the "Shareholders" and together with Monroe, the "Monroe Parties"). This opinion is rendered to you pursuant to Paragraph 14 of the Agreement.

1. On [date] the Federal Communications Commission ("FCC") or its Review Board or one of its administrative law judges released an order (or orders) refusing to approve the settlement contemplated by the Agreement.

2. On [date], the order (or orders) became final and no longer subject to judicial review. Under the express terms of the Communications Act of 1934, as amended, and applicable rules of the FCC and the courts, the time for filing a request for administrative or judicial review of the action, or for the FCC to act on its own motion pursuant to § 1.302 of the Commission's Rules expired without any such filing or action having been made or taken. A certified copy of the order (or orders) is attached.

Sincerely,

COHN AND MARKS

By: \_\_\_\_\_

\_\_\_\_\_  
\*\* As applicable.